

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/owner: Erica Deighton
281 Potwine Lane
Amherst, MA 01002

Date application filed with the Town Clerk: May 26, 2010

Nature of request: To renew Special Permit ZBA FY2008-00030, for a flag lot, under Section 6.3 and 10.33 of the Zoning Bylaw

Address: 275 Potwine Lane (Map 23A, Parcel 41, R-O, R-LD Zoning Districts & FC overlay district)

Legal notice: Published on June 23, 2010 and June 30, 2010 in the Daily Hampshire Gazette and sent to abutters on June 22, 2010

Board members: Eric Beal, Barbara Ford, Tom Ehrgood

Submissions:

- ZBA application, filed with the Town Clerk on May 26, 2010;
- The previous permit, ZBA FY2008-00030;
- The Management Plan filed at the Registry of Deeds on October 22, 2004;
- The survey/site plan stamped approved on February 12, 2004.

Site Visit: July 7, 2010

Tom Ehrgood met Erica Deighton on the site. The other Board members had viewed the site previously. The following was observed:

- The existing common driveway located on the south side of Potwine Lane which provides access to two (2) existing single family dwellings along west side of the driveway;
- The southernmost section of the gravel common driveway mostly unmaintained and containing weed growth and emergent vegetation;
- The location of the existing flag lot including the survey stakes at the western edge of the lot which demark the location of an access strip from maintenance and farming purposes;
- The approximate area of the undeveloped flag lot, which is cleared of large trees but contains 2-3 foot tall vegetation.

Public Hearing: July 8, 2010

Ms. Deighton presented the application. She stated the following:

- The request is to renew the Special Permit for the flag lot in order to preserve it as a potential building lot;
- She has no current plans to construct a house on the lot, but would like to maintain the option;
- There have been no changes to the lot since the last renewal.

Ms. Ford inquired as to whether there has been any activity to formalize the emergency turnaround at the end of the common driveway. Ms. Deighton stated that there have been no improvements completed to the emergency turnaround because the third lot has not yet been developed. She added that the foundation to the common driveway and turnaround are in place, and would be completed when the flag lot is developed.

The Board members confirmed that there have been no changes to the property or surroundings, or Section 6.3 of the Zoning Bylaw, which would affect the flag lot.

Ms. Ford MOVED to close the evidentiary portion of the public hearing. Mr. Ehrgood seconded the motion and the Board VOTED unanimously to close the public hearing.

Public Meeting:

The Board members determined that there have been no changes to the subject property, its surroundings or Section 6.3 of the Zoning Bylaw. The Board discussed and determined that the findings of the previous permit under Section 6.3 were still applicable.

Mr. Ehrgood MOVED to accept the previous findings under Section 6.3 based on the testimony of the applicant and based on the site visit that there have been no material changes in fact. Ms. Ford seconded the motion and the Board VOTED unanimously to accept the following findings:

6.3 – The lot is located in the R-O and R-LD Districts, with an FC overlay on the rear portion of the lot.

6.31 –The site is not part of an Approved Definitive Subdivision Plan and the lots meet all of the requirements of Section 6.32 through 6.37 of the Zoning Bylaw.

6.32 –The rear portion of the lot lies in the FC zone and is therefore subject to Sections 3.2832, 4.3271 and 4.3272, as follows: The main body of the lot is less than 30,000 square feet, the maximum allowed.

6.33 –The lot has an access strip (“pole”) with a minimum frontage and minimum width of 40 feet and a maximum length of less than 400 feet; there is no change in direction on the access strip greater than 45 degrees.

6.34 and 6.35 – The width of the building area is more than 150 feet and the building area is capable of containing a circle whose diameter is 150 feet, which is the frontage requirement for lots with frontage in the R-O zone.

6.36 –There are no more than three flag lots adjacent to each other at the street line.

6.37 –Access to the lots meets the requirements of Section 7.7 of the Zoning Bylaws, Access Requirements and Driveways.

6.38 –There are no more than three flag lots created from the original lot.

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses and other uses in the district. The neighborhood consists of other single family homes and also contains other flag lots. The original flag lot approval contained provisions for the preservation of farmland and wetlands which is consistent with other land uses on the same street.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air pollution, lights or visually offensive structures; will not be a substantial inconvenience or hazard to abutters; and reasonably protects adjoining premises. The flag lot will not interfere with active farmland in the area and the approved plan includes an access strip for maintenance and farming purposes.

The permit is conditioned to require the review and approval of any proposed dwelling by the Board at a public meeting. This review is intended to ensure that the proposal will reasonable protect the adjoining premises. The “management plan” includes provisions for the maintenance and repair of the common driveway to ensure that it is usable to all relevant parties.

10.384 - Adequate and appropriate facilities will be provided for the proper operation of the use. The flag lot approval includes a provision for the creation of an emergency vehicle turnaround area once development of the final flag lot is commenced. The “management plan” includes provisions for the maintenance and repair of the common driveway to ensure that it is usable to all relevant parties.

10.387 – The proposal provides convenient and safe vehicular movement within the site, and in relation to adjacent streets, property or improvements. The driveway will be built according to plans in accordance with the requirements of the Fire Department and will allow for the proper functioning of emergency equipment. The “management plan” includes provisions for the maintenance and repair of the common driveway to ensure that it is usable to all relevant parties.

10.391, 10.394 and 10.395 – The proposal avoids, to the extent feasible, impact on steep slopes and natural or scenic features; does not create disharmony with respect to the terrain and to the use, scale and architecture. The use of the flag lot is restricted to a single family house which will maintain harmony with the use, scale and architecture of the neighborhood. The permit is conditioned to require the review and approval of any proposed dwelling by the Board at a public meeting. This review is intended to ensure that the proposal will reasonable protect the adjoining premises. Additionally, the “management plan” includes provisions for the maintenance of such preserved lands.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw and the goals of the Master Plan. The proposal promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst and permits the future development of the flag lot as a single family residence in a neighborhood consisting of similar uses. The proposal is in harmony with the goal of the Master Plan to protect the rural character of Amherst through the preservation of a significant amount of conservation land.

Public Meeting – Zoning Board Decision

Mr. Beal moved to APPROVE the application to renew the flag lot with the same conditions as the previous Special Permit, ZBA FY2008-00030. Mr. Ehrgood seconded the motion. For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2010-00014, to renew ZBA FY2008-00030, under Section 10.33 of the Zoning Bylaw, at 275 Potwine Lane (Map 23A, Parcel 41, R-O, R-LD/FC Zoning Districts).

ERIC BEAL

BARBARA FORD

TOM EHRCOOD

FILED THIS _____ day of _____, 2010 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2010.
NOTICE OF DECISION mailed this _____ day of _____, 2010
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2010,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2010-00014, to renew Special Permit, ZBA FY2008-00030, for a flag lot, under Section 10.33 of the Zoning Bylaw, at 275 Potwine Lane (Map 23A, Parcel 41, R-O, R-LD/FC Zoning Districts) with the following conditions:

1. The flag lot shall have access via the common driveway only, as shared with the frontage lot and the adjacent flag lot.
2. The project shall be built as shown on the plans approved by the Board at the public meeting on February 12, 2004 and stamped approved by the Board on July 8, 2010.
3. The common driveway, common land, utility easement and open space shall be managed and maintained in accordance with the Management Plan filed at the Registry of Deeds on October 22, 2004.
4. Drainage from the common driveway shall not overflow onto abutting property.
5. The emergency vehicle turnaround area shall be designed with appropriate radii to allow emergency vehicles to make their turns.
6. No dwelling unit other than a single-family house may be built on this lot.
7. Prior to the issuance of a Building Permit, a final site plan showing the location of the house and the driveway shall be submitted to the Board for approval at a public meeting.
8. This flag lot is subject to Section 14 of the Zoning Bylaw, Phased Growth Development; authorizations are available as of August 2010.

Eric Beal, Acting Chair
Amherst Zoning Board of Appeals

DATE